

## **REMARKS**

### **Introductory Comments**

The present application includes claims 1-8, 10-13, 15-29, 31-59 and 61-65, wherein claims 1, 10, 19, 21, 23, 32, 37, 43, 47, 49, 52 and 57 are presented in independent form. With this amendment, Applicant has amended claims 23, 32, 37, 43, 47, 52, 57 and 63 to place the claims in condition for allowance or in better form for consideration on appeal, and cancelled claims 30 and 60 without prejudice or disclaimer of the subject matter recited therein.

Applicant acknowledges with appreciation the Examiner's allowance of claims 1-8, 10-13 and 15-20. As such, claims 1-8, 10-13, 15-29, 31-59 and 61-65 are currently pending in this application. Reconsideration and reversal of the rejections presented in the Office Action dated July 19, 2004 is respectfully requested in light of the following.

### **Allowable Subject Matter**

Applicant notes with appreciation the Examiner's allowance of claims 1-8, 10-13 and 15-20.

### **Prior Art Rejections**

The Examiner has rejected claims 21-56 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,672,698 to Sands (hereinafter "Sands"). The Examiner rejected claims 57-65 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,038,721 to Gordon.

#### **§ 102(b) in view of Sands**

Applicant respectfully submits that the Sands patent simply does not support the Examiner's rejection of claims 21-56 under 35 U.S.C. § 102(b) in light of the arguments and amendments made in this response. The case law is clear on this point, "anticipation requires that a single prior art reference disclose every limitation of the patent claim." General Electric Co. v. Nintendo Co., 50 USPQ2d 1910, 1915 (Fed. Cir. 1999) (citing PPG Industries, Inc. v. Guardian Industries Corp., 37 USPQ2d 1618, 1624 (Fed. Cir. 1996)) ("to anticipate a claim, a reference must disclose every element of the challenged claims and enable one skilled in the art to make the anticipating subject matter."). More particularly, the Federal Circuit has held that the test for anticipation is "[t]hat which would literally infringe if later in

time anticipates if earlier than the date of invention.” Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 3 USPQ2d 1776 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988).

Sands relates to a bedrail cushion system including a pair of siderail pads 11, 13, headboard pad 15, and footboard pad 17. Pads 11, 13 are configured to couple to horizontal bars 27, 29, and 31 which make up the siderail portion of the patient’s bed. Pads 11, 13 include padding 33. Headboard pad 15 is positioned over horizontal bars 45, 49. Footboard pad 17 is similar to headboard pad 15.

#### Claim 21

The Examiner has failed to establish a *prima facie* case of anticipation by failing to particularly point out the elements in Sands which allegedly correspond to each of the limitations of claim 21. At a minimum, Sands fails to teach or suggest a combination including “a padded barrier member sized to substantially block the gap defined **between the siderail and the end board...**” as required by claim 21. The Examiner argues that the stepped portion of headboard 15 fills a gap between the headboard and the adjacent siderail pads. However, Fig. 1 clearly shows that a gap remains between headboard 15, mattress 19, and siderails 11, 13 and when siderails 11, 13 are in their raised position. As such, Sands simply does not disclose or suggest a barrier filling the gap “**between the siderail and the end board...**” as required by claim 21.

Therefore, Applicant believes that claim 21 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of claim 21 is respectfully requested. If the Examiner should disagree with the Applicant’s arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

#### Claim 22

Claim 22 depends from claim 21. In that claim 21 is believed to be allowable, claim 22 is also believed to be allowable. Removal of the rejection and allowance of claim 22 is respectfully requested.

#### Claim 23

Claim 23 was amended to include language from now cancelled claim 30. Sands fails to teach or suggest a combination including “...the rail member including an upper edge and a lower edge, the gap filler being positioned adjacent the lower edge of the rail member and the gap filler overlaying the mattress.” as required by amended claim 23. Sands does not teach or suggest a siderail having a gap filler configured to overlay the mattress. The Examiner contends that the head board in Sands has a portion to overlay the mattress.

However, this portion is not a gap filler that fills the gap between the mattress and siderail and overlays the mattress. Positioning the Sands head rail as the siderail would result in an additional gap being formed between the overlay and the mattress.

Therefore, Applicant believes that amended claim 23 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of claim 23 is respectfully requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claims 24-29 and 31

Claims 24-29 and 31 depend from claim 23. In that claim 23 is believed to be allowable, claims 24-29 and 31 are also believed to be allowable. Removal of the rejections and allowance of claims 24-29 and 31 is respectfully requested.

#### Claim 32

Sands fails to teach or suggest a combination including "a barrier positioned **longitudinally** adjacent the patient rest surface ... the barrier further including **a protrusion positioned on the interior surface** at the first end of the rail member, the protrusion extending into the gap." as required by claim 32. Sands simply does not disclose a protrusion on the interior surface of a barrier positioned adjacent the longitudinal side of the patient rest surface. Additionally, the Examiner simply does not address the limitation requiring a protrusion positioned on the interior surface **at the first end of the rail member**.

Therefore, Applicant believes that amended claim 32 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of amended claim 32 is respectfully requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claims 33-36

Claims 33-36 depend from amended claim 32. In that amended claim 32 is believed to be allowable, claims 33-36 are also believed to be allowable. Removal of the rejections and allowance of claims 33-36 is respectfully requested.

#### Claim 37

Sands fails to teach or suggest a combination including "a barrier positioned longitudinally adjacent ... the barrier and mattress cooperating to define a gap therebetween, the barrier further including a protrusion coupled to the blocking portion and positioned to extend into the gap, the protrusion being positioned at least adjacent the end board." as

required by claim 32. Sands does not teach or suggest a protrusion coupled to the blocking portion of a barrier positioned longitudinally adjacent a mattress. Additionally, the Examiner simply does not address the limitation requiring a **protrusion** coupled to the blocking portion and extending into the gap. Bottom region 63 of Sands is part of the blocking portion and cannot be both a blocking portion and a protrusion as recited in claim 37.

Therefore, Applicant believes that claim 37 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of claim 37 is respectfully requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claims 38-42

Claims 38-42 depend from claim 37. In that claim 37 is believed to be allowable, claims 38-42 are also believed to be allowable. Removal of the rejections and allowance of claims 38-42 is respectfully requested.

#### Claim 43

Sands fails to teach or suggest a combination including "the siderail including a portion configured to laterally protrude into the gap when the siderail is in the raised position." as required by amended claim 43. Sands simply does not teach a portion laterally protruding into a gap.

Therefore, Applicant believes that amended claim 43 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of claim 43 is respectfully requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claims 44-46

Claims 44-46 depend from claim 43. In that claim 43 is believed to be allowable, claims 44-46 are also believed to be allowable. Removal of the rejections and allowance of claims 44-46 is respectfully requested.

#### Claim 47

Sands fails to teach or suggest a combination including "the siderail including a rail member and the barrier further including a lateral projection positioned at least adjacent to a corner of the rail member to extend into the gap." as required by amended claim 43. Sands simply does not teach the barrier including a lateral projection.

Therefore, Applicant believes that amended claim 47 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of claim 47 is respectfully

requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claim 48

Claim 48 depends from claim 47. In that claim 47 is believed to be allowable, claim 48 is also believed to be allowable. Removal of the rejection and allowance of claim 48 is respectfully requested.

#### Claim 49

The Examiner has failed to establish a *prima facie* case of anticipation by failing to particularly point out the elements in Sands which allegedly correspond to each of the limitations of claim 49. At a minimum, Sands fails to teach or suggest a combination including "a member having a first portion positionable in the gap to substantially fill the gap defined between the siderail and the mattress and a second portion positioned directly over the mattress." as required by claim 49. The Examiner simply does not address the limitation requiring a member having a portion to substantially fill the gap **between the siderail and the mattress and a second portion directly over the mattress**. The Examiner argues the headboard 15 meets this limitation. However, if headboard 15 was placed as a siderail the desired effects of the barrier being flush with the mattress would be negated. Placing headboard 15 as a siderail would create an additional gap between the step portion and the mattress. Therefore, headboard 15 does not meet the limitation required in claim 49, i.e., that the gap **between the siderail and the mattress** is substantially filled.

Therefore, Applicant believes that claim 49 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of claim 49 is respectfully requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claims 50-51

Claims 50-51 depend from claim 49. In that claim 49 is believed to be allowable, claims 50-51 are also believed to be allowable. Removal of the rejections and allowance of claims 50-51 is respectfully requested.

#### Claim 52

Sands fails to teach or suggest a frame including "a head end, a foot end, a first side, and a second side...**a head end siderail** coupled to the first side of the mattress and the head end siderail cooperating to define a first gap therebetween, **a foot end siderail** coupled to the first side of the mattress and the foot end siderail cooperating to define a second gap

therebetween...” as required by amended claim 52. Sands simply does not disclose a head end siderail coupled to the first side of the frame, and a foot end siderail coupled to the first side of the frame as required by amended claim 52. Sands only discloses having end boards and a single siderail on each side of the mattress.

Therefore, Applicant believes that amended claim 52 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of amended claim 52 is respectfully requested. If the Examiner should disagree with the Applicant’s arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

#### Claims 53-56

Claims 53-56 depend from amended claim 52. In that amended claim 52 is believed to be allowable, claims 53-56 are also believed to be allowable. Removal of the rejections and allowance of claims 53-56 is respectfully requested.

#### § 102(b) in view of Gordon

Applicant respectfully submits that the Gordon patent simply does not support the Examiner’s rejection of claims 57-65 under 35 U.S.C. § 102(b) in light of the amendment to claim 57.

Gordon relates to a system of padded covers for adjustable head end and foot end siderails. Inside longitudinal member 14 and outside longitudinal member 16 are attached to the foot end siderail and members 14, 16 overlap the head end siderail.

#### Claim 57

Applicant has amended claim 57 to incorporate subject matter from now-canceled claim 60. Gordon fails to teach or suggest a combination including at least one of the first barrier and the second barrier including a first offset portion, the first offset portion configured to overlap the other barrier” as required by amended claim 57. Gordon simply does not disclose a first barrier having an offset portion.

Therefore, Applicant believes that amended claim 57 is in condition for allowance with respect to Sands. Removal of the rejection and allowance of amended claim 57 is respectfully requested. If the Examiner should disagree with the Applicant’s arguments, the Examiner is asked to kindly point out with particularity where each limitation is expressly disclosed.

Claims 57-65

Claims 58-65 depend from amended claim 57. In that amended claim 57 is believed to be allowable, claims 58-65 are also believed to be allowable. Removal of the rejections and allowance of claims 58-65 is respectfully requested.

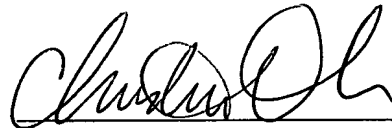
**Final Remarks**

For the foregoing reasons, it is respectfully submitted that all of the solicited claims are condition for allowance. Such action is respectfully requested.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

If necessary, applicants request that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this response be charged to the account of Bose McKinney & Evans LLP's Deposit Account No. 02-3223.

Respectfully submitted,



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